

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

455 Golden Gate Avenue, Suite 10600 • San Francisco, California 94102 (415) 352-3600 • Fax: (415) 352-3606 • www.bcdc.ca.gov

January 31, 2014

TO: All Commissioners and Alternates

FROM: Lawrence J. Goldzband, Executive Director (415/352-3653 lgoldzband@bcdc.ca.gov)

Sharon Louie, Director, Administrative & Technology Services (415/352-3638 slouie@bcdc.ca.gov)

SUBJECT: Draft Minutes of January 16, 2014 Commission Meeting

1. **Call to Order.** The meeting was called to order by Chair Wasserman at the Ferry Building, Port of San Francisco Board Room, Second Floor, San Francisco, California at 1:10 p.m.

2. **Roll Call.** Present were: Chair Wasserman, Vice Chair Halsted, Commissioners Addiego, Bates, Chan (represented by Alternate Gilmore), Chiu, Cortese (represented by Alternate Scharff), Gibbs, Gorin, Hicks, McGrath, Nelson, Pine, Randolph, Sartipi, Sears, Spering (represented by Alternate Vasquez), Techel, Wagenknecht, Ziegler and Zwissler.

Chair Wasserman announced that a quorum was present.

Not present were: Association of Bay Area Governments (Apodaca), Department of Finance (Finn), Contra Costa County (Gioia), Governors Appointee (Jordan Hallinan), State Lands Commission (Lucchesi) and Secretary for Resources (Vierra).

3. **Public Comment Period.** Chair Wasserman called for public comment on subjects that were not on the agenda. Comments would be restricted to three minutes per speaker.

Sandra Threlfall of Waterfront Action commented: I live in Oakland and the Restaurant Scott's got permission to build a public pavilion on our shoreline. Waterfront Action was one of the letters in support of this pavilion because we believed it would be public.

A year ago the Pavilion was in blatant violation of its BCDC permit. It had requested some building renovations and BCDC denied this because it didn't comply with the public essence of this pavilion. They did it anyway.

BCDC came out and did an inspection in March, a year and two months ago. BCDC said, you're in violation.

There should have been a cease and desist order right that day. They have continued to have events there, to use the public pavilion in the morning as their personal, private parking lot and they have never returned the chairs and tables.



Making San Francisco Bay Better

**BCDC MINUTES
January 16, 2014**

Lack of enforcement is a precedent. We have a major project going on down the estuary where in your permit asked the Oak to 9th developer, that once he paid off his escrow which he did this past June, he would be required within one year to build a public access trail on the south end of the shoreline.

Using the precedent of the Pavilion, he can just pay daily fines. He doesn't need to build anything by June 1st. This could continue on the waterfront; please, a cease and desist, also fines and he should also be required to give BCDC whatever revenue he earned during this year without permits.

I am excited to see what CalWORKs and EPA are doing in our estuary. It is tremendous. They are really cleaning the estuary. I know BCDC is behind this and I thank you.

Chair Wasserman commented that the Scott's issue would come before the Commission in March.

June Guidotti addressed the Commission: I want to bring your attention to – and it is my understanding that the Bay area group has filed a lawsuit against ABAG and the Joint Powers Authority because they're saying it's illegal.

Another thing I'd like to bring your attention to, in the Sacramento Bee on January 5th was Ron Calderon was caught making decisions like years ago ShrimpGate did. Ron Calderon was prosecuted and found guilty in Los Angeles.

Calderon filed a lawsuit against the FBI. Calderon did what ShrimpGate went to prison for which was manipulating the Senate and using other concerns like the Ag Alert.

The people didn't vote for ABAG and they didn't vote for Ag Alert. This is being misused by Senators for personal gain.

Seeing no further speakers, Chair Wasserman moved on to Item Four, Approval of Minutes.

4. **Approval of Minutes of the November 7, 2013 Meeting.** Chair Wasserman entertained a motion and a second to adopt the minutes of November 7, 2013.

MOTION: Vice Chair Halsted moved, seconded by Commissioner Pine, to approve the November 7, 2013 Minutes. The motion carried by voice vote with two abstentions.

5. **Report of the Chair.** Chair Wasserman reported on the following:

a. **New Business.** Does anyone have any new business they would like us to take up at a future meeting? Chair Wasserman received no response to his question. He welcomed everyone back and wished all in attendance a happy and prosperous New Year 2014.

b. **Select Committee on Sea Level Rise and the California Economy.** Larry and I just returned from testifying this morning to the Select Committee on Sea Level Rise and the California Economy. Our presentation was very similar to what we had presented to the Little Hoover Commission in November. These hearings are spreading the word about rising sea level. They also spread the word about us really beginning to grapple with what we need to do. The Chair of this committee, Assembly Member Richard Gordon, a former member of BCDC, started off by talking about the expected rise in sea level of three feet. This is an issue we're going to talk about in the next several months. We know that sometime between 2050 and 2100 the water in the Bay is going to rise by at least three feet. This slow moving emergency is upon us and if we don't start grappling with it, it will overcome us. The Commissioner's working group on rising sea level has continued to meet and will continue to meet over the next three quarters and I hope that that group can come out with a report sometime in the second quarter of this year presenting a guidance document on how we can more concretely grapple with this and some of the steps that we can take.

c. **Next BCDC Meeting.** Our next regularly scheduled meeting will be held on February 6th, at the Ferry building in San Francisco, where we expect to take up the following matters:

(1) We will consider a contract for a Sea Grant Fellow to work on sediment management.

(2) We will have a briefing on the Commission's Design Review Board and Engineering Criteria Review Board.

(3) We will have a briefing on AB 1273, the legislation staff worked on throughout last spring and summer regarding the public trust issues surrounding Piers 30-32 in San Francisco.

(4) We will have a briefing on the Warriors' proposal on Piers 30-32 along the San Francisco Waterfront.

d. **Ex-Parte Communications.** If you have not previously disclosed these communications through the website this is the time to do it. These are communications on pending permits or applications.

Commissioner McGrath stated: I have three communications to report. The first one is about the public access at the Napa Salt Ponds. I did speak with Laura Thompson of the Bay Trail and followed that up with a conversation with the Director of our organization and also with Chuck Bonham, the Director of the Department of Fish and Wildlife. I also spoke with Ming about Pier 39 and I spoke with the Hard Rock Café at Pier 39. I spoke with the Executive Director about Scott's. I believe that when you accept a deal you live with the deal. The time to argue and determine whether or not public access represents the maximum feasible is before you have a permit, not after you have a permit. You can say that times have changed and you can propose something equivalent but, "never mind" just doesn't work for me.

Vice Chair Halsted reported: I did speak with John Briscoe about his upcoming permit for sand mining and got background from his perspective. I also have spoken several times to Flicka McGurran of Pier 23 Café and she has talked to me about issues.

Commissioner Sartipi commented: I had a meeting with Eric Zell on the sand mining issue.

Chair Wasserman stated: I wanted to note that I saw the poster promoting Save the Bay on the BART coming to the meeting today. It is there because they won a BART Rider Contest calling for people to cite their favorite group promoting the environment. I want to congratulate Save the Bay on winning the contest, the poster and on winning the fight to protect the Bay and our rivers. This Commission and prior Commissions had a bit to do with this effort and we helped. We also approved billions of dollars of development along the shoreline and in the Bay as well.

Commissioner Gibbs commented: I had a meeting since our last meeting with Michael Colbruno and his clients related to the sand mining issue.

6. **Report of the Executive Director.** Executive Director Goldzband reported:

It has been ten weeks since we last met and much has occurred. I hope that you and your families enjoyed safe holidays. I hope that you made at least one New Year's Resolution that is still viable sixteen days later. And, as it is the beginning of a new year, I am reminded of the great baseball manager Sparky Anderson's observation that good seasons start with good beginnings. We've had a few at BCDC.

First, right before Thanksgiving we moved into our new offices in the state building. While not plush, they definitely outshine almost any public office space I've ever seen. Sharon Louie and her team deserve public congratulations and our new offices have received the Vice Chair Anne Halstead Seal of Approval. Please feel free to visit us and we'll give you the Cook's Tour.

Second, we are meeting here most of the time in 2014.

Third, we have experienced some staff turnover. Due to our meeting cancellations, we mailed to you on January 3rd a staff recommendation that we hire Sebastian Sandoval as a permanent, full-time Senior Accounting Officer due to the impending retirement of our current Senior Accounting Officer, Sabrina Shui. I did not receive any comments from any Commissioners; therefore, I appointed Mr. Sandoval and he started this week. He holds an undergraduate degree in Management from the College of San Juan de Letran in the Philippines and has over 15 years of accounting and banking experience. And, he simply had to walk across the hall to his new desk from his most recent position at the Department of Industrial Relations.

With the departure of Page Perry from our staff, I am pleased to announce that Cody Aichle has accepted a one-year limited term position. Cody earned her MPA with a focus on Environmental Science and Policy from Columbia University and a BA in Anthropology from Washington State University. She has volunteered in the Coastal Commission's Enforcement Program and worked for two and a half years at Columbia's Center for International Earth Science Information Network. Unless we hear otherwise from you, we expect Cody to start next week. She would be here to introduce herself, but she's in New Zealand supporting her husband. He is a member of the U.S. National Croquet Team, now competing at the MacRobertson International Croquet Shield competition.

In addition, we have two new legal interns. Mila Buckner is a second year law student at the University of San Francisco, where she is a Junior Editor of the USF Law Review. She received her undergraduate degree magna cum laude from the University of Richmond. Riti Chandiook is a second year law student at Hastings, where he is on the Moot Court Competition team and is also an editor of the West-Northwest Journal of Environmental Law and Policy. Riti received his undergraduate degree the University of Southern California cum laude.

The second stapled-together document in front of you — the one after the Committee testimony about which Chair Wasserman spoke — contains BCDC's draft Action Plan. That plan contains the discrete actions that BCDC plans to take to implement our Strategic Plan. There are three things about this document that I'd like you to note. Number one, it is about four months late. We hoped to have this to you at the beginning of the fall, but a couple of policy issues and our move simply drew our attention and resources away from it. Second, you will see that we have listed specific and discrete Actions that we want to take under each Objective. Most Objectives have two to three different Actions underneath them. The ones highlighted in yellow are those that we will concentrate on from now through the end of Fiscal Year 2015 (June 2015). We shall update you on our progress on them. Finally, this is a draft document because our units are starting to put some meat on these bones by creating summaries and task lists for each Action. For example, the last page of this document describes the steps necessary to increase the public's understanding of the Bay (that is Goal 2, Objective 3). If you are interested in discussing this, or other, Action Plan summaries or the Action Plan, per se, simply let me know and we'll set up a time that's convenient for you.

You probably have read about Governor Brown's proposed budget. Suffice it to say that BCDC's budget has barely moved from last year. We look forward to working with members of the Legislature on their climate change proposals and will do so in full partnership with the Administration.

Speaking of the Legislature, Assembly Member Gordon cosponsored, with Supervisor Dave Pine and US Representative Jackie Speier, a San Mateo County countywide adaptation conference last month. I'd like to ask Commissioner Pine to spend a couple of minutes describing his event for you.

Commissioner Pine commented: On December 9th we did convene a conference in San Mateo entitled, Meeting the Challenge of Sea Level Rise in San Mateo County. We had about 350 plus people attend. Our keynote speaker was John Englander and he put an emphasis on planning for three feet of sea level rise.

Will Travis provided an overview of the incredible vulnerabilities that the County of San Mateo faces. We are the most vulnerable County in the state of California. We had two panels, one of which consisted of regional players including BCDC who helped with some of our posters showing the extent of the possible inundation in San Mateo County. We also had a panel on local initiatives because there are quite a few interesting things happening in the County.

The goals of the convening were twofold. One was to raise awareness and we are really pleased with the media pick up. We saw this as the beginning of kicking off a dialogue and investing energy in this issue in our county. We plan to have additional convenings on more discrete subtopics of the issue. We have a notion of forming a collaborative working group of some kind to make sure that everyone is educated and on the same page as we approach this tough challenge. The tough part on this issue is, how do we move the ball forward?

Executive Director Goldzband continued: Greg Scharff and I met last Wednesday and we talked about the Santa Clara process as well.

Two quick legal issues merit your attention. You will remember that Commission staff authorized the removal of various piers and pilings, at Pete's Harbor last year and that, after the removal work had been completed, an organization representing owners of live-aboard boats at the former harbor filed suit against the Commission. The matter is now set for oral argument next week. I would like to ask our litigation counsel, Chris Tiedemann, to provide additional information about that so that you all will be updated.

Attorney General Tiedemann presented the following: We generally do not provide our analysis of the merits or lack of merit of a lawsuit in open session. We can do that in closed session if the Commission wants to do that at a future meeting. I can describe very briefly the filing against the Commission and the motion to dismiss the lawsuit that we filed that will be heard next week.

The complaint has six causes of action against the Commission and they're really of two types. One type of claim asked the Court to invalidate the abbreviated region-wide permit that was issued for removal of the docks and pilings which have already been removed and asked the Court to send the matter back here for the Commission to have a public hearing on whether those docks and pilings should be removed.

The second set of claims ask for money damages against the Commission based on an assertion that the non-profit group's due process rights were violated.

Our motion to dismiss the entire complaint is based on two theories. First, that all of the claims that object to use of an abbreviated permit to remove the fill from the Bay are moot because the action occurred before this group filed their lawsuit.

The second objection to the lawsuit and the claims for money damages against the Commission is that, as to certain of the claims that were filed under federal law, the Commission as a state agency is absolutely immune from suit under the law that they have filed their claims on and they have another set of claims based on an asserted violation of the California Constitution where they're seeking damages and there's no damage remedy under the California Constitution.

So, our arguments are fairly basic legal arguments. The hearing on our motion is next week. We expect that if the Court sustains the motion it will give the group at least one opportunity to try to change their pleading and state a cause for action. We're optimistic that this suit will be dismissed at an early stage.

Executive Director Goldzband continued: One final thing about Legal and then I've got two points.

The first is, it's been 10 weeks. Oral arguments on the Commission's appeal of the Solano County Superior Court's order that invalidates the Commission's permit for operation of the Potrero Hills Landfill will be held before the Court of Appeal next month.

Finally, I want to draw your attention to the final two letters that are part of the packet in front of you. The third piece is the letter I sent following up the San Mateo Conference. The fourth piece is unprecedented. This is a letter that was signed by the Executive Directors of the Bay Planning Coalition, Save the Bay, the Bay Institute, the Coastal Conservancy and BCDC. It describes our unified support for appropriate dredging in the Bay and making it easier for us to use those dredged materials to create, restore and bolster in-Bay wetlands. We distributed the letter throughout Capitol Hill electronically and John Coleman of the Bay Planning Coalition and I spent two days in Washington in early December meeting with Members of Congress and their staffs of both Senators. Sam Schuchat of the Coastal Conservancy was in DC the week beforehand and distributed that same letter. We have followed up with notes, and we expect the legislative Conference Report to be completed within a few weeks.

And, last week, prior to the Congress resuming its business, Resources Secretary John Laird sent the second letter I'd like to make sure that you see – that last letter in that packet. BCDC worked closely with the Secretary's staff, most notably Commissioner Amy Vierra, to draft this advocacy piece, which describes the effectiveness of the federal government's Coastal Zone Management Funding Program. It turns out that the Omnibus Appropriations Bill which passed the House yesterday and is now being considered by the Senate includes the same level of coastal zone management funding as last year. Credit goes to Secretary Laird for his advocacy!

Most important, these last two letters are very much linked. In Washington, John and I spoke with policymakers about the connections among dredging, beneficial reuse of dredged materials, the Central Valley and economic strategies in the Bay area. As Secretary Laird's letter specifically states, "a very significant portion of agricultural exports from California's Central Valley, for example, are shipped through the Port of Oakland, which works closely with BCDC."

This linkage demonstrates how the effects of climate change on the Bay Area's environment, economy and society will profoundly affect how other regions of California will change. Therefore, we need to secure relationships throughout California to ensure that the Bay Area and the State can thrive. As Stephen Sondheim once wrote:

"Witches can be right,
Giants can be good.
You decide what's right,
You decide what's good...
Just remember,
No one is alone."

If agencies could make a New Year's Resolutions, perhaps BCDC's would be to continue to work as hard as possible as a productive collaborator with all levels of government, private sector organizations and community-based organizations, recognizing that government agencies in the Bay Area work best when they do not work alone but instead work together.

That concludes my report Mr. Chairman.

Chair Wasserman asked for any questions or comments from the Commission.

Commissioner Bates commented: The only concern I have is the meeting here and the schedule. A lot of people are attempting to lower our carbon footprint. One of these is to not use paper. I came here with my i-Pad and I can't get the report. I would think we might chat with the Port to see if we can't make this more environmentally friendly so that we don't have to go through all this paper.

Commissioner Gibbs commented: I hesitate to say this Mr. Chair after such a serious concern from Mayor Bates but could the Executive Director repeat that Sondheim quote and tell us what it means?

Executive Director Goldzband replied: As Sondheim said, in *Into the Woods*. Even though you have perceptions of how things happen, witches can be right, even though we always think that witches are bad people.

Giants can be good even though our perception of giants like Jack in the Beanstalk make giants bad. We decide what's right and what's good.

And the most important thing to know is that, you can't decide that in a vacuum. No one is alone. You have to work with people whom you may not expect to work with and those are the kinds of collaborations that work best.

Chair Wasserman moved on to Item 7, Consideration of Administrative Matters.

7. **Consideration of Administrative Matters.** Chair Wasserman stated: We did receive reports over the holidays and there were no responses to this so staff acted on those. There are no pending administrative matters. This brings us to Item 8, which is a staff recommendation.

8. **Staff Recommendation on a Contract with the Association of Bay Area Governments to Assist in an Evaluation of the Vulnerability and Risk to Sea Level Rise of Priority Development Areas Identified in Plan Bay Area.** Chair Wasserman announced that Item #8 was consideration of a contract with the Association of Bay Area Governments for BCDC staff to assist in evaluating the vulnerability of PDAs (Priority Development Areas) to sea level rise. Wendy Goodfriend made the staff presentation.

Ms. Goodfriend presented the following: We would like to recommend that the Commission authorizes the Executive Director to execute a contract with the Association of Bay Area governments for up to \$75,000.00 for our staff and the Commission to support ABAG's Sustainable Growth Council-funded Plan Bay Area Implementation Project; and in particular, one of the six tasks in what I'm calling an omnibus grant. It's a very large grant.

Our tasks that we are assisting with, Task 5, is to evaluate the PDAs, the priority development areas in the recently approved Sustainable Communities Strategy.

This project will look at sea level rise exposure vulnerability and consequences of the PDAs and of importance to note, it is just one part of some of our larger work with ABAG and other partners in the region on understanding sea level rise impacts as part of the ART Program and BCDC's sea level rise interests.

And one of those projects that I want to highlight for you is the Regional Housing and Community Multi-Hazard Risks Assessment Project in which we're looking at current and future housing risks to both earthquakes and sea level rise.

So this contract that we are receiving money from ABAG through their SGC-funded project is actually important in its own right but is also going to be helping other regional collaborations that we're working on.

We would also like to ask the Commission to authorize the Executive Director to amend the contract as long as the amendment does not involve substantial changes in either scope or amount of the contract.

Chair Wasserman acknowledged two speakers on the matter. He invited the first speaker to the podium.

Mr. Paul Campos spoke: I am with BIA of the Bay Area. We're very supportive of BCDC and ABAG working together and think that this task is an important one. Priority development areas are really the lynchpin of the recently adopted Sustainable Community Strategy for the Bay area with about 80 percent of new housing and 60 percent of new jobs over the next 25 to 30 years projected to be in PDAs.

In reading ABAG's grant request to the state one of the tasks is described as including identifying risks but the next step of also how those risks to PDAs from sea level rise can be addressed through adaptation strategies.

I didn't see that critical element in the BCDC staff report of going beyond just identifying risks but also acknowledging that these are the places where the region has said it is appropriate to grow. So, how can we adapt and make those sustainable development areas?

I ask that this process be open and available for stakeholders to participate and keep track of.

Ms. Ariel Stevens addressed the Commission: I am with the Bay Planning Coalition. On behalf of BPC we wanted to say that we support and appreciate BCDC and ABAG's use of sound science to support planning and decision making.

We ask that they make every effort to keep regional stakeholders abreast of and involved in the fleshing out of this project deliverable and in the development of recommendations that result from it.

It is our understanding that just under 80 percent of future new housing in the Bay area and 60 percent of new jobs are projected to occur within the priority development areas.

The economic importance of these PDAs is clear and by considering sea level rise vulnerabilities we ask that the clear goal be to find adaptive solutions that allow development to move forward in a way that considers all interests and concerns.

Commissioner Vasquez stated: I would ask that those comments be added to the documents or the recommendation to the scope of work.

Commissioner McGrath made a request: I'd like to hear the staff's response as to how they propose to handle this.

Ms. Goodfriend responded: It is true that developing actions which is part of Task 5 of the ABAG SGC grant is not called out under our contract, that task is larger than, in dollar value, than the piece that we are contracting for. We are working with ABAG hand-in-hand on the Regional Housing and Community Risk Assessment Project and we are going to be helping them develop strategies. This work will feed into the next piece of work which ABAG is leading on the strategies and we will be assisting in that context.

Commissioner McGrath continued the conversation: The comment asking for transparency is a very reasonable comment and it would be helpful to indicate how that can be accommodated within the existing process if it can be.

Chair Wasserman made a suggestion: I think there are two separate pieces of this. One is, that staff discusses with ABAG and brings back to us a report on how the public is going to be informed about and involved in this study and the development of the adaptation strategies.

And second, we request staff to schedule a presentation by ABAG to this Commission on how they expect to implement this grant and this program. If we could add that to the motion approving, I would entertain a motion to approve the contract with those requests.

MOTION: Commissioner McGrath moved this item, seconded by Commissioner Vasquez. The motion passed by a voice vote with no opposition or abstentions.

Chief Planner Joe LaClair made a point of clarification: We have a proposal from ABAG for the funding that we have. We've scoped the work plan accordingly and we will bring back to you responses to the questions stated by Commissioners Vasquez, McGrath and Zwissler. These responses will not only address the adaptation issues brought forth but also input from interest groups.

Chair Wasserman clarified: The motion authorizes us to proceed with the contract. The two follow-on pieces are talking to them and bringing that information back and scheduling a formal presentation.

Chief Planner LaClair added: I just wanted to make sure that we weren't changing the scope and the context.

Chair Wasserman moved on to Item 9. He stated that it was a Commission hearing on the staff recommendation and possible vote on the Department of Veterans Affairs' Consistency Determination for a facility at Alameda Point for a clinic, national cemetery and Least Tern sanctuary. Jaime Michaels will make the presentation.

9. Public Hearing and Possible Vote on the Department of Veterans Affairs (VA) Consistency Determination No. C213.4. to Acquire a Portion of Alameda Point and Develop an Outpatient Clinic, Columbarium and Least Tern Management Office. Ms. Michaels presented the following: On January 3rd you were mailed the summary of a consistency determination for the Veterans Administration's acquisition of a 623 acre section of the former Naval Air Station, Alameda most of which is located in the city of Alameda except for the southwest area which is located in the City and County of San Francisco.

The determination also concerns the construction, at a 112 acre section, of a Veterans' outpatient facility, a national cemetery, public roadway and an office to manage the federally-listed endangered California Least Tern.

As a part of the action the remainder of the property, over 500 acres, will be managed to preserve the 9.7 acre Least Tern colony.

Additionally, the VA would provide public access facilities including a one acre shoreline area with public parking, a public road with a sidewalk and a Class One bike lane, public restrooms and drinking fountain facilities.

Additionally, the VA would grant the City of Alameda an easement over a two-mile long shoreline path to be used as a trail open annually to the public during the non-nesting season of the Least Tern, August through March.

The proposed project would affect a 623 acre parcel with a concentration of development that is located outside of the Commission's jurisdiction as defined by state law.

Pursuant to the federal Coastal Zone Management Act you are required to consider federal projects for their effects on the coastal zone including projects located outside of your state jurisdictional area.

In evaluating the project you should consider whether it would be consistent with your laws and policies regarding natural resources and public access including specific access policies on sea level rise and flooding for the proposed one acre shoreline access area.

And with that I'd like to introduce David Reel who's the VA's consultant who'll present more information about the project.

Mr. Reel commented: As a part of the consultant team we were also working on the Environmental Assessment which just received a FONSI in December. The proposed action is for the VA to acquire land and they did a fed-to-fed transfer with the Navy. The Navy was a joint partner in preparing the environmental assessment. The VA is to construct and operate an outpatient clinic, a national cemetery and there is also a conservation management office to be on site.

This concept is to have one VA with all the services in one location. This is a trend for the VA across the country.

Commissioner Bates commented: We actually can get WiFi in this room.

Mr. Reel continued: In 1927 the site was started to be filled in and was transferred over to the Navy for a variety of uses including World War II and it became a major site used during the War. There is a history with the China Clipper aircraft. It's been over 100 years that the public hasn't had access to this area because it is a federal-only site when the Navy held it.

I will speak about how the VA determined this was the right site for them. They requested acquisition of the property in 2006 so there has been a lot of planning and environmental review going on since then.

They looked at a wide range of alternatives outside of the Bay area in trying to find a site where they can put all the facilities together in one location. This concept of having everything at one site is how they landed at Alameda.

Over the last five years there have been a lot of discussions with the U.S. Fish and Wildlife Service in regards to protection of the California Least Tern.

The VA looked at some of the public comments that were received in the scoping process and made some additional refinements.

The Environmental Assessment was issued in draft form in February and received some public comments that were responded to. The Final was issued in November and a FONSI was issued in December.

Phase I will be the clinic, some parking and there will also be a portion of the cemetery that will be built. This portion of the cemetery will be about 25,000 niches. They will all be aboveground for the remains. This is a big trend within the VA in trying to consolidate the use of the land.

About every 10 years they are constructing another 25,000 niches to approximately 300,000 niches in about 2116. In about 100 years from now the site will be built out.

The public access component in here will be the roadway in this area that will allow public access all the way out to the edge of the property within the 100-foot shoreline band.

The Conservation Management Office will be an area where U.S. Fish and Wildlife Service will come out and monitor the Least Terns and educate the public from time-to-time and there will be some interpretive displays as well. There will also be some restrooms and drinking fountains for the public.

Approximately 440,000 cubic yards will be placed on the site permanently for Phase I to elevate that level of the site above sea level. Elevation will be about 13.5 feet up from its current elevation to accommodate sea level rise.

There are requirements even on the buildings themselves to keep out predators from getting at the terns; landscape, heights of walls, etc. were all taken into account as the VA worked through their design on the site.

There is a long-term agreement with U.S. Fish and Wildlife to come out and continue to monitor this. In addition, there will be seasonal trail access. When the birds are not breeding as much or nesting, from August 16th to March 31st, there will be a trail that could be accessed by others. This trail is not proposed by the VA but they have been talking with the city of Alameda and East Bay Regional Park District about the future potential use and connections.

The cemetery and the whole site will be secured by the VA with a fence and security patrol. This is primarily for the VA, their patients, their visitors etc. and not necessarily for the general public.

What is a little bit more open to the public is the Conservation Management Office.

On the northern edge of the access road will be a 12 foot bike lane that would be in two directions and it could eventually connect into other recreational uses that may be developed by others in the future. On the south side of the property there would be a five foot sidewalk that would parallel the road.

We've been working with BCDC as we've been going through this environmental process and more actively since 2011 and we've had multiple site visits.

BCDC gave input into some of these concepts that were put before them and the VA took those into consideration.

One of the reasons this site was chosen by the VA is because the area that is not riprap is composed of about 30,000 square feet and it's relatively flat. A lot of this development is upon the runways and the tarmac areas that were already previously developed. The VA plans to not disturb that further. They're going to build and design to use the existing situation.

The new high-water mark is at 6.6 feet and the actual elevation further back of the development will be 13.5 feet above mean sea level.

Ms. Michaels continued: If you have questions we have the project proponents here to answer them.

Chair Wasserman stated: Before we take questions let's open the public hearing and we'll start with questions from the Commissioners.

Commissioner Gibbs enquired: I would like to know from the city of Alameda how these plans are consistent with the city's hope for a mixed-use development on or near that site?

Commissioner Gilmore answered: These plans are consistent and we have been working very closely with the VA on this project. Our Chief Operating Officer for Alameda Point, Jennifer Ott, is here.

Ms. Ott commented: We've been working with the VA for several years and they are consistent with our plans and the city has planned over 150 acres of additional park space, passive, open space that by building that road will actually help us bring down the cost of our development of that space to the north.

It is a huge help to us to be able to implement additional significant regional open space facilities. We have worked very closely with them on the roadway to make sure they match up with the rest of our street sections and the rest of our community that has significant bike access and walkways. This really emphasizes that especially for their employees in trying to encourage them to bike and take alternative modes of transportation.

Commissioner Zwissler had a question: Adding the additional fill to the 13 feet, is that just over the 120 acres that are developed or is it the entire 600 acre site?

Mr. Reel responded: Phase I is really focused on the 440,000 cubic yards that will be added to the site.

Commissioner Zwissler continued: So the constructed area and that. What's going to happen to the other 500 acres? Is there going to be anything done or is it just going to be left totally alone?

Mr. Reel answered: It will be left totally alone. Besides protection of the California Least Tern colony there is a buffer required to keep further back from that. These 500 acres will be left, as is. There are no plans for development at all.

Commissioner Zwissler further enquired: Or to remove the tarmac or anything else?

Mr. Reel replied: Or to remove the tarmac.

Commissioner Hicks commented: I'm going to put on my Corps of Engineers hat here. This project will require a Corps of Engineers permit also. The last we heard from the VA is that this would involve over 11 acres of wetland fill. From our initial review of the project we don't feel that this is a water-dependent project so that we will need a robust alternatives analysis for why that much wetland fill will be required for the project.

We look forward to working with you on this and we hope to be hearing from you soon.

Commissioner Vasquez asked: You said that the cemetery is going to be secured or fenced off?

Mr. Reel replied: That's correct, yes. On most of the VA properties they do have their own fence around them.

Commissioner Vasquez continued: I asked because the northern Sacramento Cemetery is in Solano County and there is no fence around it. The public can come in most of the time except when they close in the evening.

Mr. Reel answered: The current design does show a fence all the way around.

Mr. Dough Roaldson commented: I am with the VA and I'm an environmental program manager. A cemetery is by nature, open. This particular cemetery, we have some security concerns. It will be fenced off but it is open dawn to dusk.

Commissioner Vasquez added: My concern was that you were going to close it.

Mr. Roaldson responded: No. It's a cemetery but it's not a park.

Commissioner Vasquez continued: I served 18 years on a public cemetery and it is somewhat of a park setting. People come there, they meditate, they visit their loved ones, they think about and contemplate and lots of efforts in cemeteries are to make that area feel that way; that it's tranquil and people can come to visit.

Mr. Roaldson agreed: You're absolutely correct. It will be that kind of setting.

Commissioner McGrath asked about the seasonal nature of the public access and the nature of the consistency determination: I'm excited that something has been found to work in the long term to manage and preserve the wildlife area. I would love to see it expanded. When I began looking at the maps I said, boy, that Least Tern colony is a long way from the shoreline, over a mile.

While I absolutely support science-based information that protects nesting areas for endangered species as warranting the highest level of protection, I don't necessarily see the analytical gap bridged here between the potential for impact, the need for management and the need for on a long term, restrictions of this nature.

Some of the research that I've seen for the development of habitat areas within the restoration of the South Bay Salt Ponds, the research established that predation from avian species, particularly Western Gull, were the main threats to the Least Tern successful breeding.

I know from my own experience that there has been successful breeding at fenced sites in southern California at Playa Del Rey and in Orange County; smaller sites on beaches with much less robust buffers.

It raises in my mind the question of, would we not be better off with some active management of the Least Tern area that is science-based looking at the sources of predation, looks at the actual colony. I don't want to pick on this project so much as say, if under the consistency review authority which is our single shot at trying to balance wildlife protection and provision of public access, we don't ask those questions at this stage, we may miss the opportunity to try to achieve a better balance.

I am a little bit troubled with a mile buffer.

Mr. Richard Crowe from the VA responded: We spent several years negotiating with the U.S. Fish and Wildlife Service. From our research, there is no science or an adequate buffer from a development to a colony. There is science on adequate buffer between colony nests. There is a paucity of research in that area.

The U.S. Fish and Wildlife Service was adamant and we've negotiated in good faith and they felt that that quarter mile, 1674 linear feet, was the necessary buffer for the human impacts potential on the Least Tern.

We've negotiated as much as we could and in order to get a favorable biological opinion that those were the final buffers.

Commissioner McGrath continued the dialogue: I understand and sympathize with your dilemma but adamancy does not constitute peer-reviewed science. And while we don't have the U.S. Fish and Wildlife Service here, I guess to some degree I do think of that as the independent analytical role of the staff and the Commission.

I have no trouble with the provisions and the burden with the VA with the exception of, that may end up being de facto management of this system on a hands-off basis when that, in fact, is not the best thing for either habitat or public access.

I don't know what to do with that concern. It certainly bothers me.

Mr. Crowe responded: The biological opinion is subject to negotiated modification should any other new science come up or new position by the current managers. The development was going to be below that little bulge but the U.S. Fish and Wildlife Service felt that that was going to jeopardize the Least Tern and they were going to issue a jeopardy opinion which would kill the project. We negotiated very well and successfully with the city of Alameda to move that development up and that satisfied the U.S. Fish and Wildlife Service and all parties agreed to that and I think that was our way forward.

Ms. Ott commented: When I've had conversations about this issue with U.S. Fish and Wildlife Service related to city of Alameda's parcel, the issues they bring up is that it's kind of a death of a thousand cuts concern. By a little development here and a little development there and

these things that we do, they don't really know when the balance is going to be too much to push or have a negative or adverse effect. They're very anxious about some of these things.

You'll see that the biological opinion is more conservative. From the City's perspective we would have much rather have had a year-round trail. I can imagine the City approaching the VA at a future time, once things have settled, bringing this up again as an issue.

Commissioner Randolph commented: I'm really surprised that in the Bay Area with its evident lack of buildable land, the enormous demand for housing and debate and controversy about where you put housing and the density of housing and the competition of housing in some cities for industrial and commercial space that such a large parcel in the very heart of the Bay Area on the water side would be allocated to a cemetery. My question is, in terms of regional prioritization around land use, was the use of the land for this purpose part of any larger regional land planning prioritization process?

Commissioner Gilmore responded: In terms of the VA's project, the short answer is, no because it was a fed-to-fed transfer and there is a process by which other federal agencies get to request surplus land. The City of Alameda wasn't at the table while that was going on.

When the Navy and the VA decided that that would be the use of the land, that was when the city of Alameda really became engaged with the VA as to, what are you going to do, how are you going to do it, how can we work together?

But in terms of prioritizing this from a regional standpoint, that piece of property was not part of the discussion.

Ms. Ott commented: The Mayor is absolutely correct. We don't have a say in the fed-to-fed transfer and how that land ultimately gets used. I would say, if that land would have come to us it would have been subject to the public trust and the City of Alameda is a trustee on behalf of the state and we would have owned that land. It would have been subject to all the tidelands restrictions and so that land could never have been used for housing. It would have always been public open space or maritime development.

Commissioner Ziegler asked: I don't understand how BCDC can make a finding of federal consistency when the Corps has noted that there's a non-dependent water use and fill issue of wetlands, understanding that the regulations are different and there's not regulation of fill of wetlands going on here but yet, the policy of concern for us is natural resources and we have wetlands potentially being filled.

It would be helpful for me to understand how that fits together.

Deputy Director Steve Goldbeck commented: The simple answer is, these wetlands are outside of our permit jurisdiction and the Corps has separate authority. They act after us, so they're not tidal wetlands in BCDC jurisdiction.

Commissioner Ziegler continued: But they're not within the jurisdiction of BCDC but they are critical natural resources to what we care about of the functioning Bay. Where do we draw the line? I have concerns and interests around water quality when there is construction within the jurisdiction zone that these activities do not impact water quality which is outside of our jurisdiction but is of a critical component of the natural resources that we are charged with protecting.

How do those two things fit together?

Mr. John Bowers, staff counsel with BCDC chimed in: The situation that we're dealing with here particularly in respect to the wetlands is it will need an Army Corps of Engineers permit to modify or to fill.

Under the Coastal Zone Management Act all federal property is considered to be excluded from the coastal zone. We don't look at the effects of the federal activity on the federally-owned property. We have to look at the effects of the federal activity on property that is outside of the federally-owned property.

In some cases, for example, the Least Tern colony is something that we do look at because Least Terns migrate. They move. And they use the Bay as a foraging area and as a result the Least Terns are considered to be a coastal resource.

We were not able to make a similar finding with regard to these wetland areas. They are of minimal ecological value. We didn't see the same kind of habitat value or other ecological value with regard to these wetlands as we were able to determine and to find to exist with regard to the Least Tern colony.

That's the explanation for the difference in the treatment of these two resources that we are talking about.

Commissioner Ziegler continued: If I understand that, it's actually that the impact is minimal.

Mr. Bowers replied: Well, the impact is minimal but that taken together with the fact that all federally-owned property is excluded from the coastal zone. Our jurisdiction is dependent on our ability to show that there is an effect of the federal activity on some area outside of the federally-owned property. And we were able to do that with respect to the Least Tern colony. We were able to make that kind of finding with regard to the public access improvements. But we were not able to make that kind of a finding with respect to these wetland areas.

Mr. Batha added: The VA is intending to fully mitigate for the loss of the wetlands that is within the Corps' jurisdiction.

Commissioner Nelson commented: I'd like to explore this issue of wetlands just a little more. Obviously, the thinking here is that any impacts to the Least Tern colony would have impacts on a species that uses the Bay and migrates. I'm trying to understand why that similar thinking isn't necessarily true for Bay wetlands that are extremely heavily used by migratory waterfowl. I'm asking staff for more information about the nature of these wetlands because if impacts on the terns that use the Bay establishes a nexus then any potential impacts on shore birds as well that might use the Bay would establish the same kind of nexus. I'm hoping the staff can help us with that.

Mr. Batha replied: The bulk of the wetlands is a pickle weed area. The Least Tern colony is one of the largest in the Bay.

Commissioner Nelson added: It seems to me that the key issue for us is not whether or not there is a tidal connection but whether they are functional wetlands that attract shore birds. In the case of the tern colony there is a well established and well known endangered species nesting area but if the impact on coastal resources is, if that rationale is the same, if it applies equally to non-listed species then I think it's important that we understand the nature of those wetlands as well.

Commissioner Sears commented: We've looked at the potential hardscape to be built from a sea level rise perspective and what the impact would be and what appropriate steps should be taken to fortify a potentially built area for sea level rise. Do we evaluate the wetlands area also through a sea level rise lens?

So the wetlands that are not now connected might be. Do we look at that possibility going forward in evaluating what is appropriate with the wetlands as they currently exist?

Mr. Batha responded: I think these wetlands would be slated to be filled largely by the columbarium.

Mr. Reel stated: The majority of these wetlands are in Phase I.

Ms. Michaels added: There are also some wetlands that are located at the southern boundary of the development area. That phase is a later development phase around the order of about 80 years out. The remainder of the cemetery site gets built as needed. This will be decided at a later date. It is very possible that this particular wetland area may or may not get filled at some point in the future.

Chief Deputy Director Goldbeck commented: I just wanted to note that our sea level rise policies don't apply outside our permit jurisdiction and this is outside our jurisdiction. Our sea level rise policies actually wouldn't apply in this case.

Commissioner Sears continued: To me it goes back to the point that Commissioner McGrath was making, we look at the Least Tern in a different way because the birds fly. Wetlands can become connected to the Bay and have a broader impact on areas in our jurisdiction as sea level rises. I think there are different issues there that might make it appropriate for us to look at the wetlands.

Commissioner Zwissler commented: Back to the three feet issue that we raised earlier. How does that affect the 500 acres? How high is that area and what does happen there in 60 or 70 years if nothing is going to be done to it?

Mr. Reel responded: As part of the analysis for the environmental document, we did look at sea level rise out to 2015 and 2100. The facilities themselves, the Phase I which is going to occur in this part of the site are going to have a high enough elevation because they'll be about 13 feet above mean sea level.

Commissioner Zwissler stated: I'm talking about the other 500 acres. I'm just curious.

Mr. Reel replied: At this point there isn't any plan to fill that.

Commissioner Zwissler continued: In the area that is going to be left untouched, what is the sea level rise projection for that area? No one responded with an answer to this question.

Chair Wasserman interjected: I've got a horse and a cart concern here. I think we may be trying to use pieces of the jigsaw puzzle way outside the lines of the puzzle itself. But taking the last question in terms of protection of the Least Tern site from rising sea level if that was the thrust.

Commissioner Zwissler clarified his commentary: There's a huge section of land that we're talking about today and I was just curious, what's going to happen to it in our –

Chair Wasserman replied: So I think the answer to your question is, we don't know. And part of what we don't know is there is other development going on at the Naval Air Station which may or may not affect this in terms of barriers and other things from that area but that's beyond our coastal zone consistency determination today.

Coming back to the issue of the wetlands that are outside of our jurisdiction, that are within the Corps' jurisdiction; the issue being raised is, will the Least Terns – we are legitimately taking that into consideration because they're migratory, they use the Bay, they use our jurisdiction.

The question that has been posed is for the wetland that is outside our jurisdiction, which theoretically is used by shore birds; is that sufficient then to bring it within our consideration just as the Least Tern issue is?

I'm going to give staff another chance to answer that question.

Ms. Kelsey Bennett from AECOM spoke: I am the NEPA Project Manager for the EA. We are a consultant for the VA. The Least Tern colony itself would be outside all the way through the end of the century of sea level rise inundation projections.

Mr. Batha commented: What you're saying is that you do not believe that the wetlands that are there today are significant to affect our jurisdiction over it, is that what you're saying?

Commissioner McGrath chimed in: I think that's the actual question that we don't have the information. I was going to suggest that we continue the vote on this until we got those answered.

There are, in fact, endangered species that are present in vernal pools around San Francisco Bay. There could be a potential significant impact of the loss of some significant percentage of the gene pool for an endangered species. This is just a hypothesis.

Anything that occurs entirely on the federal reservation that doesn't have an impact on the remaining coastal resources is beyond our jurisdiction. We would be better off with factual answers that say, here are seasonal wetland losses that are likely to be mitigated. They represent such-and-such a percentage in similar habitat that is located within BCDC's jurisdiction. And the impact is likely to not spill over in any significant way. I don't want to presuppose what this is one way or the other. I'd just like to see the analysis completed.

Mr. Roaldson commented: We appreciate the Corps and we have had numerous talks with you. We are clearly interested in those wetlands. We've had numerous discussions about a strategy. We're still evaluating that strategy. There are numerous drainage pipes that were existing to drain the runway.

We don't know what's happening and this is outside of your jurisdictional discussion right now. What's the VA going to do? We're going to take care of those wetlands. We're either going to move them and we've got two very high quality wetlands on the property and they are very easy to mitigate into. We've had these discussions with the Corps.

We've had a discussion, if we mitigate do we mitigate by phase or do we mitigate the entire site? We've had a discussion with Mr. Batha about the quality of the wetlands. Today they are very low quality wetlands on these 13 acres.

The VA understands its 401 and 404 requirements. We are still assessing that. We're working with the Corps to come up with a solution. We'll be working with the Regional Board on the 401 certification.

Currently we're going to be constructing on concrete, we're going to be opening all that concrete up. We'll have much more infiltration than what we're estimating right now, about 30 percent greater than what you're seeing now.

The runoff will be better controlled that's going into the Bay now. This is an idea of what our strategy is evolving to. We haven't hardened it yet. In the end, we recognize the wetlands. We understand that we have to deal with it and we will.

Brad McCrae with BCDC staff commented: I want to sort out what was said today and how we came to this. This discussion about the wetlands and about the value of the wetlands was deliberated among the BCDC staff.

I will read from the Final Environmental Assessment, the two sentences say, "As previously mentioned, the wetlands and marsh habitat is located within a formerly developed area situated on the former NAS Alameda Airfield and areas are dispersed within a matrix composed of more asphalt than grassland or upland. While the wetlands are generally well developed within that matrix, native species are few and overall species' diversity and structural diversity is low. Therefore, these wetlands are considered medium to low quality."

In our discussions, it was just using our best professional judgment we determined that these wetlands weren't significant in the context of the coastal zone off the federal property didn't include the resources from these wetlands. This was based on the quality of the wetlands as described here.

Perhaps now, we should hold the public hearing. And if you'd like, we'd be happy to postpone the vote.

Chair Wasserman interjected: Don't go there yet. I think there is only one speaker.

Mr. Larry Tong spoke: I am with East Bay Regional Park District. All great regions have great parks and open spaces and I want to thank the Commission for all that you do to keep our region great.

As indicated in the final biological opinion and in the declaration of restriction, the current proposal is for the northwest territory to include a 147 acre regional park.

The Park District has also been a vital stakeholder in this process for over six years and that process has been outlined in the biological opinion.

We support the recommendation of the consistency determination and we'd recommend that the Commission make that finding.

Ms. June Guidotti spoke: I ask that you hold the vote like it was requested by the BCDC staff. The statement, "it's just pickle weed." You're paid to do your job and that's to protect the wetlands. And if there's a question I request that you hold off the vote on this. I really feel that you don't have a say, it's really the Corps of Engineers.

Chair Wasserman mentioned that there were no other speakers after Ms. Guidotti's comments. He entertained a motion to close the public hearing on this item.

MOTION: Commissioner Randolph moved to close the public hearing on this item, seconded by Commissioner Nelson. The hearing was closed with no objections.

Chair Wasserman elucidated the issues before the Commission: The issue before us is a consistency determination under our coastal zone responsibilities. And the question as to these wetlands, being clear that ours is not the last word, is whether there's information before us including the information in the environmental assessment, to determine whether there's enough effect on these wetlands, which are not within our jurisdiction, from the potential activity to shore birds or others related to the Bay as we have with the example of the Least Terns. I would say that one of the concerns I have in our answering that question is, given the context, this is not an area within our primary jurisdiction, that's clear. And there are other agencies, the Corps in particular, in whose jurisdiction this does lie and who is very aware of the quality issues and the protection issues and the mitigation issues.

For an issue that has, in fact, been studied both formerly and with discussions with our staff, the question is, whether we really expect that there's going to be significant and new information than we now have. And if we're asking the applicant and the related and interested agencies, in fact, to do significant work that hasn't yet been done, is that what we really want to do on this at this stage in this given what the Corps has said or what the applicant has said about dealing with the Corps? The answer may be, yes.

I'm very concerned that in a situation which is not of our making where there is, in fact, piecemeal jurisdiction over properties like this and development like this, that we be very careful about how much we ask to be done when it's not in our primary jurisdiction. If it were, I would take a very different view of this.

So I'll just put that question out. We may want further discussion on it or it may be time for a motion.

Commissioner Nelson commented: What troubles me a bit is that these issues aren't addressed in the staff recommendation. I'm honestly not sure of where I land on these issues. It seems to me there are two questions. My concerns are not directed with regard to the Least Tern nest area. The first question is, what does it take to provide a nexus between an impact on a resource out of our jurisdiction and our making a determination with regard to a consistency determination? What does it take to make that nexus? That's a legal question.

The next question is a factual question. What are the facts on the ground here? There are both seasonal wetlands and coastal salt marsh and there are listed species that use both of those habitats at times. I have absolutely no idea what the value of those wetlands is or whether there is any endangered species use or other use that would provide that nexus. When I look at the staff report I can't tell and that leaves me feeling uncomfortable.

I would second Commissioner McGrath's recommendation that unless there is a really compelling reason why we have to act today that we continue this hearing so we can get a little more information from staff about those two questions.

Commissioner Vasquez stated: I'd add the substitute motion that we accept staff's recommendation and it's my belief that no matter what value the VA puts on it that the Corps will have a higher value in that it will be mitigated to the fullest extent that it can be.

Commissioner McGrath added: I've not made a motion. I agree with Barry's comment. Let be clear that I have no intention of holding the VA hostage for whatever may be reasonable or not reasonable by the U.S. Fish and Wildlife Service. I do think the point that Barry makes is an important one. The standard for approval of a consistency determination is not even fully consistent. It's consistent to the maximum extent practicable. I can understand and conceive a set of findings that could have this consistent to the maximum extent practicable but they're not before us. There is no analytical information that says, the wetlands consist of this kind of habitat, they're here, here's the mitigation proposal. We have documents that are silent.

And I think in finding consistency we do the process no service. So if the motion goes forward I will abstain because I don't think we have the information we need and the set of findings that would enable me to make the finding that it's consistent to the maximum. I do believe it could be developed. I just want it before us.

Commissioner Scharff asked: As a follow up to that, why wouldn't you make a motion to then, get that information as opposed to abstaining?

Chair Wasserman stated: I asked a parliamentary question. If that was not a motion then I think Commissioner Vasquez is making a motion. It's not yet accepted as the motion which is to approve the staff report. We'll come back to debate it. Is there a second for that motion?

MOTION: Commissioner Vasquez moved to approve the staff report, seconded by Commissioner Zwissler.

Chair Wasserman had a question: The EA has been certified? It's a FONSI that has been made by the VA. A FONSI is a finding of no significant impact which is the federal equivalent of a negative declaration in our common parlance under CEQA. Any questions or comments?

Commissioner Sears commented: I think one of the things that's causing me a little hiccup here is, if this is a 12 phase project and we're not being asked to make a consistency determination just on Phase I, we're being asked to make a consistency determination on a 12 phase project that's estimated to extend until 2119. And because of that durational aspect, I think it makes it even that much more important to have some of the information that we don't have.

Commissioner Gilmore added: I just wanted to make an observation. Commissioner McGrath was talking about the wetlands and said that he would feel more comfortable if the mitigation measures were before us before moving forward with the decision. That is certainly a valid point.

I just want to make the observation that from having worked with the VA and the Navy and the VA is going to be working with the Corps, these things take significant amounts of time to negotiate and go back and forth on. I'm just making the observation is that a piece of information that we feel that we need in order to make a determination? We are not likely to see that anytime soon. It seems to me that these things take a very long time. I don't know where the VA is in the process.

Ms. Michaels commented: We wouldn't have the information about mitigation but information that we do have is information about the quality of the wetlands that are the subject of this discussion. We could provide that if necessary.

Chair Wasserman stated: Commissioner Sears' point is a good one. The issue that we're really looking at is a narrow one and even if we had the additional information it's not going to change the fact that over the 80 years of this going on this could change a whole lot.

Both for the record and for whatever persuasive value it may have, I'm going to vote for this because while I really feel a little more comfortable having the information that we've talked about as well, I do think that we need to be very careful about not asking for too much. You do have an environmental assessment and a finding of no significant environmental impact. We'd certainly all be more comfortable if there had been a full EIR. This is also one piece of a very complex puzzle and development both for the City of Alameda and for our region. I think that it is reasonable to support a finding of consistency. If there are no further comments I will ask for a vote.

Mr. Goldbeck spoke: We do want you to vote but we would like the staff to make the recommendation first.

Ms. Michaels read the staff recommendation: On January 10th you were mailed the staff recommendation which you have in front of you. It does recommend that the Commission concur with the VA's consistency determination.

I'd like to bring your attention to an errata sheet that you should have in your packet. The revised language concerns special conditions regarding plan review, future assignment of public access, maintenance responsibility and the VA's granting of an easement over the seasonal trail to the city of Alameda.

Additionally, changes have been made to the findings, mainly to correspond to changes in the special conditions. One change clarifies information of the shoreline riprap at the site. Of the revised new language the most substantive piece is the new language in special condition No. II.C.6 of the staff recommendation. This is regarding the VA's easement for the seasonal trail.

In summary, the revised language recognizes that the Secretary of the VA retains authority over final granting of the easement to the city of Alameda. Further, if the easement isn't granted the VA is required to return to the Commission with an alternative access proposal of equal or greater value in the form of a revised consistency determination. The revised language which is on page two of your errata sheet says regarding the seasonal trail easement, "On or before completion of the activities authorized herein as a part of Phase One and subject to the approval of the Secretary of Veterans Affairs, the VA shall issue an easement to the city of Alameda, California over an approximate two-mile-long, 12- to 25-foot wide corridor. Said easement shall be for recreational purposes only as a seasonal trail and shall not interfere with the VA's use of the adjoining land.

The easement will be located, primarily along the shoreline, at the western, southern, eastern boundaries of the 511.2 acre undeveloped area of the project site, to be developed and managed by the City of Alameda, and only be available for public use from approximately August 16 to March 31 of each calendar year consistent with protection of the Least Tern required by U.S. Fish and Wildlife Service and ongoing maintenance of remediated areas. Any future improvements to the seasonal trail within the Commission's jurisdiction shall require either an amendment to this consistency determination and/or a separate permit action by the Commission and the review and advice of the Design Review Board. In the event that the Secretary of Veterans Affairs does not approve the easement from the VA to the City of Alameda within the above-specified time frame, the VA shall submit a revised consistency determination and receive Commission concurrence regarding implementation of an alternative public access improvement or set of improvements, which are of equal or greater public access value than the seasonal trail described in this concurrence."

This is an important correction that you should know about.

The staff recommendation does contain special conditions that require the VA to implement a variety of measures including, public access improvements, the one-acre shoreline area with parking, the public road with a bike lane and a sidewalk, restrooms, drinking fountain facilities, the easement that I just spoke of, and long term maintenance. It also includes another provision that addresses long term maintenance of the public access facilities including the one-acre shoreline area, if a flood occurs in the future. And lastly, I just want to point out given the conversation we've been having, there is also a condition and it's Special Condition II.C that talks about the need for the VA to get other local, federal and state approvals before they begin their work. That would include the Corps of Engineers' approval.

As conditioned, the staff believes that the project is consistent with the Commission's laws and policies regarding natural resources and public access and we recommend that you concur with the VA's determination.

Attorney General Tiedemann spoke: I'm not sure exactly what the motion on the floor is but the Commission has two choices with respect to a consistency determination. You can concur with it or reject it. As I understand Commissioner McGrath's, Sears' and Nelson's remarks, they are not interested in rejecting the consistency determination today by their vote; they're interested in obtaining more information about the effects of the development on the federal site, on Bay resources. So, I would be careful about the vote on this motion so that it's not a vote to reject the consistency determination, if in fact, what some of the Commissioners want to do is obtain further information for a future vote on the consistency determination. Once you reject it, you've rejected it.

Chair Wasserman addressed procedure: I have a procedural suggestion. If the maker of the motion and the seconder would accept the addition that in addition to recommending the staff report to concur and find that it is consistent, to make a consistency finding, that we also request staff to provide this Commission updates on the status and actions by the Army Corps and any other approval agencies including any information about these wetlands making clear we're making the consistency recommendation. If they would accept that then I would actually ask us to make a straw vote before we vote on the motion by hand to see the feeling of the body taking into consideration Ms. Tiedemann's point and what I think is the thrust of the concerns that have been stated. If that is acceptable we're going to do a straw vote by hand.

Commissioner McGrath made a suggestion: My trouble with this is not that there will not be mitigation, it's the lack of a set of findings. I am reluctant to vote, no, or to abstain on a project. I am a stickler for making sure that the analytical information is presented in the staff report with a

set of findings. If the staff could agree to bring back this set of findings that makes clear the reasoning that the impacts will not spill over into the coastal zone, in part because of the mitigation which is there in a condition, it would be helpful.

Chair Wasserman commented: I very much appreciate that. You and I differ on whether or not the facts are sufficient as they are before us. My suggestion is that we go with a straw vote because a straw vote is positive. You will have registered your position. If the straw vote is negative then what we will do is probably entertain a substitute motion to continue this to the next meeting. With that, can we have a hand vote, all those in favor of the motion to find consistency with the additional proviso directing staff to come back to us and keep us informed on what is happening. Raise your hand if you are in favor of that. Somebody count please. (There was a show of hands by the Commissioners)

Chair Wasserman continued: That's 13 hands raised. Then we would have the votes to make a consistency finding. Has the applicant reviewed the staff recommendation and does the applicant agree with it?

Unidentified Audience Member: Yes we do.

Ms. Michaels commented: On the keep-us-informed status reports, is that to be taken in the form of a special condition to the consistency determination? Chair Wasserman answered in the negative.

Chair Wasserman continued: Thank you. Therefore, I would call for a motion on the vote. I think we should do this by roll call.

VOTE: The motion carried with a roll call vote of 13-2-4 with Commissioners Bates, Gilmore, Chiu, Scharff, Gibbs, Pine, Randolph, Sartipi, Vasquez, Techel, Wagenknecht, Zwissler and Chair Wasserman voting "YES", Commissioners Addiego and Gorin voting "NO" and Commissioners, McGrath, Nelson, Sears and Vice Chair Halsted abstaining.

Chair Wasserman ascertained: The motion passes, the consistency finding is made. Thank you all for all the participation. That brings us to Item 10.

10. Public Hearing and Vote on Appeal No 1-13, Tonnesen Pet Cemetery, Extension No. Six to Solano County Marsh Development Permit No. MD-82-12. Chair Wasserman stated: We will now take up Item 10. Item 10 is a public hearing and vote on appeal No. 1-13 that is both hearing and possible vote on the issuance by Solano County of a Permit Extension for the Tonnesen Pet Cemetery in the Secondary Management Area of the Suisun Marsh. Ming Yeung will make the presentation.

Ms. Yeung presented the following: Item No. 10 is a hearing and vote on an appeal of a Solano-County issued marsh development permit. Since this item is a little different from our usual project hearing I would like to take a moment to outline the procedure for the item.

First, I will start with some background on the Suisun Marsh and the provisions of our laws to guide the Commission's consideration of this matter. I will then briefly summarize the proposed project, the appeal points that have been raised and the staff's recommendation.

The project applicant will be available to answer any questions you may have on the project at that point.

Following that, the appellant will present her appeal and any members of the public who wish to comment on this matter may be heard.

I will then restate the staff's recommendation and the Commission will vote on the appeal.

The Marsh is divided into a primary and secondary management area. The primary management areas include wetlands and more sensitive Marsh areas. The Commission has direct permitting authority over these areas.

Solano County and other local agencies have direct permitting authority over the secondary management area which consists primarily of upland grassland areas.

Marsh development permits issued by the County in the secondary management area may be appealed to the Commission.

On November 26, 2013, Solano County issued a five year time extension for a Marsh development permit and a use permit for the continued operation of the Tonnasen Pet Cemetery in the secondary management area of the Suisun Marsh.

The County's decision was appealed to the Commission on December 9, 2013. The Commission is required to hold a public hearing on the appeal within 21 to 42 days of receiving the appeal which is why this project is before you today.

In considering the appeal the Commission must first determine whether the appeal raises a substantial issue with respect to the project's consistency with three documents, the Suisun Marsh Preservation Act, the Suisun Marsh Protection Plan and Solano County's Local Protection Program also known as the LPP.

If the Commission determines that the appeal does not raise a substantial issue, the appeal will be dismissed and the County's decision on the project becomes final.

If the Commission determines that the appeal does raise a substantial issue it must then schedule a de novo public hearing on the project to consider it as a whole and its consistency with the Marsh laws and policies.

As described in the staff report and for reasons which I'll briefly summarize the staff recommends that the Commission find that the appeal does not raise a substantial issue and dismiss the appeal.

In evaluating whether an appeal point raises a substantial issue the Commission should consider two things.

One, whether the appeal raises a legitimate question as to the conformity of the project that the Marsh Act, the Marsh Protection Plan and the County's LPP requirements.

And two, whether the Commission has enough information to determine that the project is in conformance or not with these three documents.

The appellant has raised 10 separate appeal points regarding the pet cemetery. The Commission staff has determined that five of these ten points are non-appealable matters because they fail to address any inconsistency of the project with the relevant Marsh laws and policies. And these are listed on page seven of your staff report.

The remaining five appeal points have been grouped by the staff into two broad areas of concern that deal with ecological impacts of the Marsh and water quality. And these are more fully summarized on pages four, five and six of your staff report.

In summary, the five appeal points are: One, that the pet cemetery is inconsistent with the limited agriculture designation for the site and the Water Board's classification of the facility as a waste disposal facility represents a change that is inconsistent with the General Plan and the LPP. Two, that the project would result in the loss of sensitive habitat. Three, the project has changed its

power lines in violation of the LPP. Four, that the project violates water quality because it does not have a liner. And five, that the project does not address the frozen animals with pharmaceutical drugs or radiation that may impact water quality and that the Water Board must issue revised waste discharge requirements for this site.

I will provide some information on the project and address these appeal points individually.

The pet cemetery is located on an approximately 20 acre parcel east of Scally Road south of Highway 12 and north of the Potrero Hills Landfill.

The property currently contains a single-family home and the authorized pet cemetery.

Approximately 15 acres of this parcel is divided into three five acre segments or phases authorized for pet disposal.

To date only Phase I has been filled and is in the process of being closed. Under the authorized Marsh Development Permit disposal would continue into Phase II.

Marsh Development Permit MD-82-12 was originally issued to Lois Tonnesen in August of 1982 and found to be consistent with the County's LPP which grants an exception to the pet cemetery and allows for its operation in the Marsh.

The permit has been extended by the County on five previous occasions. The last time extension approved by the County in August of 2008 was appealed to BCDC by the appellant on similar appeal grounds as the appeal currently before you.

In November of 2008 the Commission considered the appeal and found that the appeal did not raise a substantial issue and dismissed it.

Nothing in the County's authorization has changed since the Commission's consideration of a prior time extension in 2008.

The one change that has occurred with respect to the project is the Water Board's classification of the project as a non-municipal solid waste Class III non-hazardous waste disposal facility which occurred in April of 2009.

According to the Water Board it chose to classify the pet cemetery in this manner to better protect water quality. The Water Board has explained to the Commission staff that this classification does not change the original authorization granted to the operator under the Marsh Development Permit and does not change the type of wastes that may be accepted at the site.

This is explained in both the waste discharge requirements and in a letter to Ms. June Guidotti from the Water Board which are attached to Exhibits D and E of the staff report.

In response to the Water Board's classification the Tonnesen Pet Cemetery is also required to obtain a solid waste facilities permit from the Solano County local enforcement agency.

The staff has determined that the Water Board's classification of the site and the additional permitting requirement by the County does not change the authorization granted under the County's Marsh Development Permit.

The new classification adds additional oversight and regulation by these agencies with respect to water quality and solid waste disposal activities.

No additional environmental impacts are expected in the continued operation of the site and staff has not received any indication that the continuation of the project raises any concern with respect to sensitive habitat.

Therefore, the first two appeal points raised by the appellant concerning ecological impacts to the Marsh have been determined by the staff not to raise a substantial issue.

The other appeal points raised by the appellant including concerns over changes to the power lines, water quality and lack of liner and concerns over radioactive animal disposal at this site have also been found by the staff to not raise a substantial issue.

The staff has been informed that the pet cemetery has not undertaken any work to change power lines at the site.

According to the Water Board and the waste discharge requirements the disposal of laboratory animals or other animals that may be contaminated with radioactive or hazardous elements is prohibited and a liner is not required at the site.

The Water Board has also told staff that the waste discharge requirements for the project are up to date.

For all these reasons the staff has determined that the appeal does not raise a substantial issue with respect the Marsh laws and policies.

I'm available to answer any questions and we also have the project applicant, Greg Tonnesen here as well if you have any other questions. If there are no questions I would call up the appellant for her appeal points.

Chair Wasserman announced: The public hearing is opened. The first speaker is June Guidotti.

Ms. Guidotti addressed the Commission: I am holding you accountable if you pass this turning the pet cemetery into a dump. If you pass this, boxing me in to the dumps all around me, my family's agricultural land is worthless.

Holding the vote until the pet cemetery gets their water permits that Ming just stated because we have three abeyances on the Water Board because you weren't privileged to get the colored pictures of the water that runs off, it's milk. It's the color of milk that's running down into the flood plain, into the 100 year flood plain.

The pet cemetery is above the salamander ponds and leaches into them. I'm asking you to hold your vote for the pet cemetery until they get their water permits.

I have 25 pictures of the power lines showing where they have gone in, it's called Northern California Pole Association. They moved the poles off my property onto to Scally Road. They moved the AT&T line onto Scally Road off of my property. And they came in from Tonnesen's and they worked on the power lines through their property because they had to move it because of years ago. Because Gary Tonnesen gave an easement to Potrero Hills Landfill.

The power lines, the volume was so high you could have put an 80 megawatt power plant in. I still continue to get my parcel burned and I have gone to BCDC for help and I haven't been very successful.

They talked about a Page Perry, she's no longer here. This document is a 400 page document that BCDC wrote that I will pass on to you.

Jim Lehman wrote this email and he told Bob Batha, I should know the answer to this but I don't; is PG&E exempt from the requirements for the Marsh Permit when they're operating within their right of way? And Bob Batha wrote this back to him saying that they need to get a Marsh development permit and they don't have it.

So what did they do? They went to the Northern California Pole Association, \$6,000.00 to hook it up. We just had a 1,000 acre fire that came and it burned all the way over down into the Bay here. The point is, they came on my property and I did not know to come to hook my telephone

line up again, is that it had its own address. The telephone line is under AT&T. Agenda 95 that Gavin Newton signed into law that you cannot hook up a wireless line if it's on private property. So they burned the parcels to get it on a County road or a city road or whatever.

I'm asking you to deny this until they get their water abeyance permits because the Regional Water Board in Oakland only requires E. coli, three things for the state. And the letter that we submitted that's in your packet we want all the contaminations from the Livermore Laboratory, U.C. Davis has a permit that's dumping them in there, they weren't required by law to have a liner in that pet cemetery in 1982. They continued to fill in the Marsh. The point is that there is no liner. I ask you to not vote on this tonight and give me the chance to get through the Water Board and I've already been told I have to appeal it to federal level already.

But I do have Solano Garbage Company, Pet Cemetery and Potrero Hills under abeyances because of the problems with the water.

Mr. Brian West addressed the Commission: I am with West and Associates Engineers. We're the environmental consultant to the Tonnesen Pet Cemetery. I have nothing to add to the excellent presentation that the staff made on this matter.

We would ask you to dismiss this appeal and the Tonnesen Pet Cemetery is fully permitted with the Regional Water Quality Control Board and fully in compliance with other permit conditions.

Ms. Lesly Emmington Jones spoke: I am friends with June and I have ties in the Suisun Marsh area that go back several generations. It seems like the Suisun Marsh is almost an abandoned area with things going forward such as a dump site which is going before the California courts next month.

There are very few residents around this property and an opportunity site for low-level waste to change it incrementally in different ways.

Ming raised some critical issues about the appealable matters and maybe they're able to be discounted. Water is disappearing and wetlands aren't so wet and reaching into the wetlands is a matter that we should take with a real conscience.

It's not 1982 and there's a huge dump right next to the pet cemetery that is also leaching into the Suisun Marsh. I really appreciate the effort to pay attention to the wetlands in Vallejo. We're all together in this and the world is changing and the pet cemetery from 1982 the impacts are different today.

Chair Wasserman stated: That concludes the public speakers. I would entertain a motion to close the public hearing.

Commissioner Gibbs had a question for Ms. Jones: Thank you for coming to testify on behalf of your friend. If she will give you her permission are you able to restate and summarize the basis for this appeal?

Ms. Jones replied: I share your efforts to grasp the complexity that June is trying to say. She has many things and they're connected. Solano County is the leadership in a direction it shouldn't be going in. There are so many things and they're all jumbled together. Ms. Guidotti has a ranch that isn't getting water now for the cattle that come from Nevada in the springtime. Her ranch is like a little barometer of the changes. She's in the secondary protection zone. The California Sports Fish and Protection Alliances is trying to address some issues. I can't answer for June. I can't answer for myself.

Commissioner Gibbs replied: We just have to try to understand the issues with the permit.

Ms. Jones answered: I would say that this pet cemetery is not something to just take for granted because it's recommended to go forward, no liner. What's really going into the pet cemetery? Should these pets be going into this part of our country, I don't know. I don't think you should approve this without understanding the pets place in the leaching.

Chair Wasserman continued: May I have a motion to close the public hearing?

MOTION: Commissioner Wagenknecht moved to close the public hearing on this item, seconded by Vice Chair Halsted. The hearing was closed with no objections.

Chair Wasserman asked for any further comments or questions from the Commissioners. Hearing no questions or comments he asked Ms. Ming Yeung to read the staff recommendation.

Ms. Ming Yeung read the following staff recommendation: The staff's recommendation is that the appeal does not raise a substantial issue with regard to the conformity of the project with the Marsh laws and policies. The language for the motion is, I move that based on findings set forth in the staff recommendation the Commission determine that Appeal No. 1-13 raises no substantial issue, with the conformity of Marsh Development Permit MD-82-12 on the Suisun Marsh Preservation Act, the Suisun Marsh Protection Plan and the Solano County component of the Suisun Marsh Local Protection Program and that the Commission dismiss the appeal.

If the Commission agrees with the staff recommendation it should vote, yes, on the motion. If the Commission votes, no, a hearing de novo on this project will be scheduled for an upcoming Commission meeting.

Chair Wasserman enquired: Is there a motion?

MOTION: Commissioner Vasquez moved this item, seconded by Commissioner Chiu.

Commissioner McGrath commented: As the Regional Board Representative who did vote for an adoption of a series of classifications I'd like to just make a couple corrections for the record.

This project was approved by the County and by the Regional Board in a previous era, 1982. At that time the Regional Board did not use a set of waste discharge requirements. They did approve it again in 2009 and they did classify it in a manner that would allow them to regulate it for water quality. At the time they did that they made two important findings.

First of all, they investigated whether or not there were groundwater impacts. And they concluded that there were none. Those were based upon shallow water sampling and they found that there was higher coliform up gradient that is above the pet cemetery. There was no indication that the pet cemetery was creating any groundwater contamination.

But to make sure that they had the authority to direct reports, they did classify it. So it is regulated under that for exactly that purpose.

As noted by the staff, they don't think that lining it is good idea. They think it would slow the putrefaction. It has been reviewed and it's been reviewed in a manner not that allows solid wastes that's expressly prohibited, it is regulated as a solid waste unit so that it can be regulated so that in the event of concerns, reports can be required.

It is regulated and I support the staff recommendation.

Chair Wasserman asked for any other questions or comments. He asked for a roll call vote on this item.

VOTE: The motion carried with a roll call vote of 19-0-0 with Commissioners Addiego, Bates, Gilmore, Chiu, Scharff, Gibbs, Gorin, McGrath, Nelson, Pine, Randolph, Sartipi, Sears, Vasquez, Techel, Wagenknecht, Zwissler, Vice Chair Halsted and Chair Wasserman voting "YES", no "NO" votes and no abstentions.

Chair Wasserman continued: The motion passes. The appeal is dismissed. That brings us to Item 11.

11. Staff Briefing on the Corte Madera Study. Chair Wasserman announced: Our last agenda item is a briefing by staff on the Corte Madera Study that examined the role of wetlands in providing resiliency to sea level rise and the potential resiliency of wetlands in the face of sea level rise. Sarah Richmond will make the staff presentation after a few remarks from the Executive Director.

Executive Director Goldzband commented: This study has received some pretty major attention throughout the Bay area and it is Supervisor Sears' backyard. It is a real great example of how your staff can work with a variety of stakeholders on very scientific and technical issues that at some point as they develop and as knowledge develops will end up informing the Commission in its permitting and planning processes. This is a one of a few studies like this that will take place in the years to come of the real science that will end up informing how we all think about climate change, rising water and how we're going to make sure that California's economy and environment and society continues to grow in a positive way.

Ms. Sarah Richmond presented the following: We're going to talk about the project we did at the Corte Madera Baylands. When I use the word, baylands, I mean mudflats and marshes. This study looks into the role they can play as a first line of defense against coastal flooding. We engaged with researchers, leading experts around the Bay and translated that science into a strategy to maintain this nature-based flood protection as sea level rises.

The findings will apply throughout the Bay.

Waves can erode shorelines and can also increase the potential to overtop levees and other types of structural shorelines. By measuring and modeling waves, we learned how parameters like water level, wave height and vegetation can affect the way these waves travel over mudflats and marshes.

And more importantly, we started thinking about how our baylands will change as sea level rises and how their ability to provide flood risk reduction will then change as well.

By improving the resilience of our baylands to sea level rise therefore we're also improving the resilience of shoreline communities to coastal flooding.

We worked with an outstanding research team. It pulled together researchers who don't normally work together. We had a very inter-disciplinary team thanks to funding from U.S. EPA, Marin County and generous contributions from our researchers.

Our project site was located just north of the Tiburon Peninsula in Central San Francisco Bay. Corte Madera Creek flows into northern Corte Madera Bay.

The marshes that we were studying are located within the Corte Madera Ecological Reserve managed by the California Department of Fish and Wildlife. This whole complex is bounded by residential, commercial and industrial development.

Muzzi Marsh was one of the first tidal restoration projects restored in the Bay. North Muzzi Marsh has an eroding bayfront levee. Heerdt Marsh is unique because it's one of few marshes in the Bay that's never been diked or filled.

This project was very unique because it measured waves all the way in the subtidal zone through the mudflats and onto marshes and that really hasn't been done in the region.

We also collected topographic and bathymetric data for modeling and sediment data, which we will discuss later.

In general, during the study period, we measured typical winter conditions. Wave heights were moderate, the largest waves offshore and progressively smaller waves toward the marsh.

There were no waves measured on the marsh. The transition between the mudflat and the marsh can be on the order of four feet. There is a significant barrier for water to get up onto that marsh.

At low tide water levels, the waves that would be on top of them are interacting just with the mudflats. At mid to high tides, water levels and waves would be interacting with the mudflat and a little bit with that marsh edge.

It's only at very high water levels where there's high enough water to get over on top of that marsh. The mudflat does a lion's share of the work interacting with waves, reducing the wave heights during very frequent water levels and it's only at these extreme tides where the marsh becomes a factor.

Waves entering Corte Madera Bay are reduced, on average, by 66 percent by the time they travel through those mudflats and get to the marsh edge. At the shallowest water levels, they are reduced up to 80 percent. What that means is a one-foot wave offshore is only 0.2 feet by the time it reaches the marsh. The mudflats have done all that work reducing the wave height.

Now, we only measured water levels a little bit over six feet in elevation. We know that with sea level rise water levels are going to be rising. So it was very important for our study to examine what would happen to waves and the ability for baylands to knock them down at those higher water levels.

And this is particularly important because the data shows that as water level increases, the flood risk reduction that these baylands provide decreases. We want to understand this and see if we can manage it moving forward.

When we looked at very high water levels, we learned that different marsh widths will be required to provide the same flood risk reduction at different water levels.

To knock a two-foot wave down to a one-foot wave we only needed about 40 feet of marsh at a 7-foot water level, when there's about a foot of water over the marsh. At a nine-foot water level, where there's about three feet of water over the marsh, we need 840 feet of marsh to knock down that two-foot wave to a one-foot wave.

So with just two more feet of water over the marsh, we need 800 more feet of marsh width to knock down that wave. And now if we think of an even higher water level and this would be our ten-foot water level, we're off the chart. It really makes the point that with deeper water over the marsh you need a much wider marsh to provide the same level of flood risk reduction.

Whether you have an incoming two-foot wave or a three-foot wave, the real issue here is what water level is that wave travelling on? Water level matters more than wave height to reduce wave height and provide flood risk reduction.

Then we asked ourselves, what about the role of vegetation on these marshes? We found that whether you have pickleweed or cordgrass, theoretically those species provide the same ability to knock down waves. However, if you lose that vegetation, regardless of species, you lose for example almost half of the ability to knock down waves at high water levels. So vegetation is very important. Overall, we found a high, wide, vegetated bayland provides the most flood risk reduction. We want a high marsh to knock down waves efficiently at low water levels and we want a wide marsh because if we do have a high water level we need room to knock those waves down.

The neat thing about baylands is that they actually have the ability to adapt to sea level rise. As water level rises, the whole profile can shift upward and landward. This assumes that there is enough sediment to build up the marsh plain and that there's room for the system to move back. Current science indicates that our sediment supply in the Bay appears to be decreasing and we know that so many of our marshes are bordered by levees and developments. So this room becomes quite critical.

Our site is not predicted to survive with accelerating sea level rise and declining sediment supply. By the end of the century it appears that the Corte Madera marshes will become mudflats, if we do nothing.

Even though Muzzi Marsh was one of the first restoration projects, this project did not restore all the processes that naturally sustained these baylands.

If we look at old photos of what the marsh used to look like, we can see that there was extensive tidal channels, the marshes were fringed by wet meadows and it was connected to Corte Madera Creek. While the landscape has clearly changed, there is potential to restore some of these processes through management measures.

In our project we evaluated seven management measures. We looked at the benefits and constraints, the implementation details and described some of the natural and constructed analogs. And then we got to the place where we said, well, which ones do we choose for Corte Madera? How do we save those marshes?

And to answer that question we developed a conceptual model. The key here is that we identified how these different measures affect the key processes that baylands use to adapt. And by understanding how these processes work at the Corte Madera site, we can think about which management measures make the most sense there.

Our goal here was to provide a tool that can be used by the region. You can go to your site and say, well, how are my processes working? And that will help choose measures which form a sea level rise adaptation strategy.

Our focus was on flood risk reduction. Your restoration projects may have other goals. And that can also be accommodated by this tool.

The first process we looked at was marsh edge erosion. At our site the mudflat has been eroding and the marsh edge over the last 150 years has retreated, on average, 500 feet due to various processes.

We talked about the importance of preserving marsh width to knock down waves at high water levels. Therefore, our first measure aims at decreasing that marsh edge erosion.

We looked at a natural coarse beach here at Outer Bair Island because it can buffer wave erosion.

Second year monitoring results from the constructed coarse beach at Aramburu Island indicate it has been successful so far. The sediment is still there and it is adjusting to wave conditions as expected.

The next process we wanted to look at was vertical accretion or the ability of these marshes to build up sediment. We found that the Corte Madera site was accreting enough sediment to keep up with current sea level rise but we also found something surprising — the rate of sedimentation appears to be decreasing over time. It used to be higher than it is now and this is not typical of marshes.

This decrease in sedimentation, coupled with marsh edge erosion and the fact that we no longer have a connection to Corte Madera Creek and have a dredged sediment channel in Corte Madera Bay represent various lines of evidence to suggest that the system is sediment limited. This certainly will have an effect on its ability to accrete material moving forward.

Our next measure aims to increase vertical accretion through mudflat and marsh recharge which increases the local sediment supply by introducing dredged material that either as a plume in the water column or as a mound on the mudflat as close to the marsh as possible and then letting natural processes carry that sediment into the marsh.

The efficiency of these processes is largely unknown and is an exciting opportunity for further research.

We also recognize that in order to get that sediment deposited across the marsh plain we could increase the density of channels, which are pathways to get Bay sediment into the system.

If you excavated additional channels you could also sidecast the material along the channels to create high important tide refugia for species who don't want to get wet at high water levels. Restoration practitioners around the region have experience with channel design and this experience could be very valuable.

I've described how we could build coarse beaches, increase sediment supply and improve the channel network to help sediment move onto the marsh. These measures form the first phase of our sea level rise adaptation strategy. These measures aim to increase the resilience of the marsh as it is today. However, at some point, the marsh may not be able to keep up with sea level rise and it may need high ground to move onto when the water levels increase.

The second phase of our north strategy aims to provide this high ground. Right now behind North Muzzi Marsh, there are seasonal wetlands behind the marsh and those seasonal wetlands are backed by a stormwater detention pond. All of this is off limits to the current marsh because there is an inboard levee.

High ground is critical to prevent the marsh from being squeezed between a rising Bay and a hard landward edge, which would cause the marsh to drown and was predicted by the end of the century if we do nothing. The last measure involves creating a gentle slope at the back of the marsh similar to the wet meadow that historically ringed the marsh. The slope could be built in stages. Where there is storm water, it could be diverted through the slope, possibly providing water quality co-benefits. This is the horizontal levee concept. This slope represents a transition zone over which the marsh could migrate landward as sea level rises.

I would like to conclude with a few points. The first is, not to overlook the mudflat. It does the lion's share of the work to reduce wave heights, protecting the marsh from erosion.

The second, is to know your site and work with what you've got because the most appropriate management measures are going to be based on site-specific geomorphic conditions. And those conditions, the management measures that provide a high, wide vegetated marsh provide the greatest flood risk reduction benefits.

And then finally, embrace the edges. We found that a lot of research should be conducted to better understand the relationship of the mudflat to the marsh, especially related to sediment supply. This research will be very important and furthermore, planning for sea level rise should consider if there is room for marshes to migrate inland and if so, take advantage of this opportunity.

And I'll also note that this work is being used in the Baylands Goals Update, which you've been briefed about in the past, and internally in the Adapting to the Rising Tides Program. We have also supported follow-up research to address identified data gaps.

I thank you for your attention and will take any questions you might have.

Chair Wasserman called for questions or comments from the Commissioners.

Commissioner Ziegler commented: This is great work. I need a clarification on high and wide. So is wide this way or this way?

Ms. Richmond answered: Wide is in the horizontal direction and high is in the vertical direction.

Commissioner Ziegler continued: So wide you're saying is like the lateral extent from the water's edge back?

Ms. Richmond replied: Yes, I am. And regarding high, I always like to think about wetlands as trying to keep their heads just above water. They like to stay high in the tidal frame and when they start to slip, it becomes a problem.

Commissioner McGrath commented: I'm very impressed with this work and very pleased. One of the few things about aging is you find ideas that you were thoroughly thrashed for when you were young becoming mainstream.

Commissioner Zwissler commented: This is amazing work but I'm a little puzzled about something. You showed the one chart where you said it is predicted that this area will go underwater at some point. Now are you saying that even if there are these adaptation strategies?

Ms. Richmond answered: No. I think that's the key. This is the predicted future if we do nothing. This work gives us the opportunity to maybe change this fate.

Commissioner Zwissler further enquired: And have you tried to model what the predicted outcomes of the adaptation would be?

Ms. Richmond replied: No. But that sounds like a great idea.

Commissioner Zwissler had another question: How are you sharing this with others? This has applicability everywhere.

Ms. Richmond concurred: I couldn't agree with you more. I think that's why plugging in the Baylands Goals Update which is looking at baylands around the region has been so important. We've also been talking with anybody who will hear us. We have spoken at various wetland conferences that are attended by folks working on this throughout the nation and throughout the world. We're doing our very best to share our findings.

Commissioner Nelson had questions about next steps: I want to see if there is anything you can tell us about next steps in this effort especially with regard to integrating with the LTMS and the dredge management discussions in the Bay Area and how to start thinking about modeling and eventually testing some of the different strategies for dredged material to be used.

Ms. Richmond replied: Yes. We've been speaking with the sediment management team at great lengths about some of these measures because we recognize that it could require changes to business as usual. We're also working with them to leverage sediment modeling efforts they're involved in and to learn more about these processes and how they can be integrated into management. I'm really excited about the Regional Sediment Management Plan that's in development, particularly its science strategy which may be a great place to articulate research needs.

Chief Deputy Director Goldbeck added: That was one of the reasons we really want to do these studies. People are talking about various alternative ways to manage sediment and what we really needed was more information on what was involved in that and what we would need to look at. So this is a first effort to try to do some of that assessment work.

Commissioner Gorin commented: This was one of the reasons why I wanted to be here. I represent Sonoma County, including the district around San Pablo Bay. Sonoma Land Trust has been doing yeoman's work in trying to acquire land and restore the salt marshes.

The specific question that I have, how many other groups are you working with? And are you sharing this with the Land Trust and Coastal Conservancy and other kind of organizations that are really working in that area?

Ms. Richmond replied: Yes, absolutely. We have a website that has this report as well as all of the science reports available to all online. We also made a presentation at the Conservancy and to the North Bay Watershed Association. We also made a presentation at the State of the Estuary Conference, which attracted an even larger audience including land trust organizations and other non-profits. We are certainly happy to share this work. We really want to move the conversation forward.

Commissioner Gorin had one final question: As you really looked at your studies, Corte Madera Bay is a bay. It's sort of enclosed. Does that have the same level of implications to broader San Pablo Bay?

Ms. Richmond answered: Fortunately, there are tools online where you can see how your baylands may change with sea level rise. But in terms of the wave dynamics, things in Corte Madera Bay are different than things in San Pablo Bay. So, exactly the level of wave height reduction that baylands in San Pablo Bay provide will probably be different than that which we measured in Corte Madera Bay. These differences can be tackled on a project basis. What this project did really was prove the concept that baylands are nature-based, flood protection. We collected data to show that baylands do work for us. That was really an important finding from this effort.

Commissioner Randolph commented: Excellent work. I can see lots of applications for this down the road including possible initiatives coming that would restore very large amounts of wetlands around the Bay. As somebody who lives overlooking the Marsh and sees it floating up by the Larkspur Ferry pretty much every day, I look at the Marsh in a new way now.

Chair Wasserman commented: I certainly want to add my thanks.

Commissioner Vasquez added: I just wanted to make sure that she had mentioned the North Bay Watershed Association presentation because that does involve people from your jurisdiction. I think that there is a watershed conference that's coming up pretty soon.

Ms. Richmond stated: And for those in Marin County, I'll be sharing this work with the public on February 8th at the Marin Environmental Lecture Series will be held at the Bay Model in Sausalito.

Commissioner Vasquez commented: Any discussion with the Suisun Marsh folks and the Suisun Resource Conservation District about some of this work?

Ms. Richmond responded: I personally haven't shared with them, but Joe works closely with them.

Chief Planner LaClair stated: We are working with Steve and his staff at the Suisun Resource Conservation District to update their local protection program and part of looking at that is how they go about dealing with restoration. One of the things that we will be doing is applying these lessons from Corte Madera in crafting the adaptive management plan that we'll bringing forward to you in about a year's time. We'll absolutely integrate this kind of information into that work.

Chair Wasserman had a closing commentary: I want to echo the comments. I think this is terrific. I think what we're going to start to assemble is a set of both undertaken and to-be-undertaken but relatively concrete plans to start adaptation. We've got some that we have already heard about. This is a really effective one in terms of the sort of soft solutions. I would entertain a motion to adjourn.

11. **Adjournment.** Upon motion by Commissioner Sears, seconded by Commissioner Addiego, the meeting was adjourned at 4:19 p.m.

Respectfully submitted,

LAWRENCE J. GOLDZBAND
Executive Director

Approved, with no corrections, at the
San Francisco Bay Conservation and
Development Commission Meeting
of February 6, 2014

R. ZACHARY WASSERMAN, Chair